

## **Senate Bill No. 224**

### **CHAPTER 587**

An act to amend Sections 10296, 10335, 10340, and 10430 of, and to add Sections 10295.6 and 10304.1 to, the Public Contract Code, relating to public contracts.

[Approved by Governor October 8, 2011. Filed with  
Secretary of State October 8, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 224, Pavley. Public contracts: Department of Water Resources.

Existing law provides that specified contracts entered into by any state agency for goods, services, or other specified activities, whether awarded through competitive bidding or not, are void unless and until approved by the Department of General Services, and approval shall be denied if the contract does not meet the required specifications of the bidding process. That law exempts certain transactions and contracts from that law, as specified. Existing law requires state agencies to secure at least 3 competitive bids for each contract and exempts specified contracts from this requirement.

This bill would make those laws inapplicable to any contract entered into by the Department of Water Resources for the acquisition, sale, or transmission of power, or for related services, as specified. This bill would authorize the Department of Water Resources to award contracts for the acquisition of specialized equipment for facilities of the State Water Resources Development System, and would require the Department of Water Resources, in collaboration with the Department of General Services, to establish the conditions under which a contract in excess of \$25,000 is awarded without the competitive bidding process, as specified. This bill would include in the list of exempt contracts that do not require 3 competitive bids, contracts for services for the operation, maintenance, repair, or replacement of specialized equipment at facilities of the State Water Resources Development System and other specified contracts entered into by the Department of Water Resources, as provided. This bill would require the Department of Water Resources to be governed by the laws regarding contracting for goods and services by state agencies, as prescribed.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10295.6 is added to the Public Contract Code, to read:

10295.6. Sections 10295 and 10297 do not apply to any contract entered into by the Department of Water Resources under Part 3 (commencing with

Section 11100) of Division 6 or Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code for the acquisition, sale, or transmission of power, or for services to facilitate such activities.

SEC. 2. Section 10296 of the Public Contract Code is amended to read:

10296. (a) Every contract entered into by any state agency for any purpose specified in subdivisions (a) to (d), inclusive, of Section 10295, or in Section 10295.6, shall contain a statement by which the contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board. For purposes of this section, a finding of contempt does not include any finding that has been vacated, dismissed, or otherwise removed by the court because the contractor has complied with the order which was the basis for the finding. The state may rescind any contract in which the contractor falsely swears to the truth of the statement required by this section.

(b) (1) This section does not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

SEC. 3. Section 10304.1 is added to the Public Contract Code, to read:

10304.1. Notwithstanding Sections 10301, 10302, and 10304, the Department of Water Resources may award contracts for the acquisition of specialized equipment for facilities of the State Water Resources Development System, as defined in Section 12931 of the Water Code. Prior to exercising the authority granted by this section, the Department of Water Resources, in collaboration with the department, shall establish the conditions under which any contract in excess of twenty-five thousand dollars (\$25,000) is awarded without the competitive bidding process. The conditions shall be developed to expedite operations and maintenance work to reduce the risk of the loss of water or power to the State Water Resources Development System, and shall require the Department of Water Resources to prepare a written document declaring that the contract meets those conditions. Consistent with its authority under Section 10297, the department shall review those contracts for consistency with the conditions established pursuant to this section.

SEC. 4. Section 10335 of the Public Contract Code is amended to read:

10335. (a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Sections 10295.6 and 10351, and paragraphs (8) and (9) of subdivision (b) of Section 10340, all contracts

subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval. This article shall apply to any state agency that by general or specific statute is expressly or impliedly authorized to enter into the transactions referred to in this section. This article shall not apply to contracts for the construction, alteration, improvement, repair, or maintenance of real or personal property, contracts for services subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, to contracts that are listed as exceptions in Section 10295, contracts of less than five thousand dollars (\$5,000) in amount, contracts of less than five thousand dollars (\$5,000) where only per diem or travel expenses, or a combination thereof, are to be paid, contracts between state agencies, or contracts between a state agency and local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state agency to demonstrate that the consent of the Attorney General to the employment of the other counsel has been granted pursuant to Section 11040 of the Government Code. This consent shall not be construed in a manner that would authorize the Attorney General to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list of contracts approved pursuant to subdivision (b). This list shall be filed quarterly with the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. The list shall be limited to contracts with a consideration in excess of twenty thousand dollars (\$20,000) during the life of the contract and shall include sufficient information to identify the provider of legal services, the length of each contract, applicable hourly rates, and the need for the services. The department shall add a contract that meets these conditions to the list within 10 days after approval. A copy of the list shall be made available to any requester. The department may charge a fee to cover the cost of supplying the list as provided in Section 6253 of the Government Code.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:

(1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.

(3) If an amendment to a contract has the effect of giving the contract as amended an increase in monetary amount, or an agreement by the state to indemnify or save harmless any person, the amendment shall be approved by the department.

SEC. 5. Section 10340 of the Public Contract Code is amended to read:

10340. (a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.

(b) Three competitive bids or proposals are not required in any of the following cases:

(1) In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.

(2) When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals.

(3) The contract is with another state agency, a local governmental entity, an auxiliary organization of the California State University, an auxiliary organization of a California community college, a foundation organized to support the Board of Governors of the California Community Colleges, or an auxiliary organization of the Student Aid Commission established pursuant to Section 69522 of the Education Code. These contracts, however, may not be used to circumvent the competitive bidding requirements of this article.

(4) The contract meets the conditions prescribed by the department pursuant to subdivision (a) of Section 10348.

(5) The contract has been awarded without advertising and calling for bids pursuant to Section 19404 of the Welfare and Institutions Code.

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

(7) Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations.

(8) The contract is for services for the operation, maintenance, repair, or replacement of specialized equipment at facilities of the State Water Resources Development System, as defined in Section 12931 of the Water Code, and meets the conditions established by the Department of Water Resources for those contracts.

(9) The contract meets the conditions prescribed by the Department of Water Resources for contracts subject to Section 10295.6.

(c) Any agency which has received less than three bids or proposals on a contract shall document, in a manner prescribed by the department, the names and addresses of the firms or individuals it solicited for bids or proposals.

SEC. 6. Section 10430 of the Public Contract Code is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(3) (A) Notwithstanding paragraph (1), Section 10365.5 shall not apply to a contract that is part of a single competitive procurement conducted in more than one stage for information technology goods or services, when the Director of the Department of General Services and the Chief Information Officer determine that there is no conflict of interest under Section 10365.5 and that it is in the best interest of the state to utilize this procurement method. Nothing in this section shall preclude the applicability of Section 12112 to this procurement method.

(B) The Department of General Services shall annually submit a report on its Internet Web site describing each determination granted pursuant to subparagraph (A), listing the basis for the determination, and disclosing the total amount of money paid or to be paid to the contractor under the contract that was the subject of the determination. The department shall provide notice to the Joint Legislative Budget Committee within 30 days of the posting of the report.

(C) For purposes of this paragraph, “information technology” means information technology goods or services, or both, as appropriate.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors of the California Community Colleges shall be governed by this chapter, except as provided in Sections 10295, 10335, and 10389. The Department of Water Resources shall be governed by this chapter, except as provided in Sections 10295.6, 10304.1, 10335, and 10340.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the

benefit to the public generally, from any governmental decision made by the state officer or employee.

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